

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 814 of 2001

Old F.A.F.O. No. 597 of 1988

1. Raghuvir Singh S/O Bhagwat Singh, 45 years,
 2. Phool Singh S/O Bhagwat Singh, 41 years,
 3. Randhir Singh S/O Bhagwat Singh, 32 years,
 4. Hari Singh S/O Bhagwat Singh 27 years,
R/O village Bila Bavri, The. & Dist. Guna (M.P.)
- Claimants-**Appellants**

Versus

1. Shiv Kumar Gupta,
16, Darshanigate, Dehradun, (U.P.)
 2. M/s Atul Motors through Bhuvesh Kumar,
Darshanigate Dehradun (U.P.)
 3. The New India Assurance Company
Through Manager, 25, Rajpura Road, Dehradun (U.P.)
- ... **Respondents.**

Sri S.C.Bhatt, Advocate, learned counsel for the appellants.
Sri T.A. Khan, leaned counsel for the respondent no.3.

Date April 18, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) has been preferred against the judgment and award dated 25-4-1988 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli (***in short the Tribunal***) in M.A.C. Petition No. 16 of 1987, Raghubir Singh and others Vs. S.K.Gutpa and others, whereby the learned Tribunal awarded compensation of Rs. 6,000/- along with interest @ 12% per annum against the Opposite Parties. Aggrieved, the claimants have come up in appeal for enhancement of the compensation.

Relevant facts giving rise to this appeal are that Smt. Maya Bai widow of Bhagwat Singh aged 63 years, a cultivator by profession and earning about 500/- per month was returning after Darshan of Shri Badrinath Ji by bus No. HRX-2791 on 31.7.1997 and at about 12 noon, near Hanuman Chatti on Sri Badrinath-

Joshimath road a motor accident took place due to negligence of the driver of the said bus with the result Smt. Maya Bai sustained injuries and died at the spot along with others inside the bus. Her sons have filed claim petition for compensation of Rs. 25,000/- against the owner of the bus Sri Shiv Kumar Gupta and New India Assurance Company with whom the bus was duly insured.

The owner/driver of the bus in question contested the claim petition and filed written statement asserting therein that Ved Prakash was driving the bus at the relevant time at a moderate speed carefully and cautiously and due to rains, the road was slippery, the bus slipped and skidded towards Khud down the road and the accident was inevitable and beyond the control of the driver. The Insurance Company also contested the claim petition by filing its written statement on the ground that one Vijay Kumar was the driver of the vehicle on the illfated day and there was no road permit in respect of the said bus and that the liability of the Insurance Company was limited to Rs. 15,000/- only.

The learned Tribunal framed necessary issues in the case. After perusing the evidence on record as well as after hearing both the parties, the learned Tribunal has held that the accident was caused due to the rash and negligent driving on the part of the driver resulting in fatal injury to Smt. Maya Bai. It was further held that the bus was being driven with valid permit and it was duly insured, hence the Insurance Company was liable to pay compensation. Ultimately, the learned Tribunal awarded compensation of Rs. 6,000/- in favour of the claimants along with interest @ 12% per annum against the insurer.

It has been contended on behalf of the appellant that the learned Tribunal fell into error in not considering the provisions of the Act and it has been argued that the compensation awarded is quite inadequate and improper.

I have heard learned counsel for the appellants as well as learned counsel for the Insurance Company and have perused the entire material on record.

The record reveals that admittedly the accident in question took place on 31.7.1987. The deceased Smt. Maya Bai was aged 63 years at the time of her accidental death. On the quantum of compensation, the learned Tribunal has observed that the petitioners have not stated on oath if they had any dependence on the earning/income of their mother Maya Bai. The learned Tribunal has awarded only Rs. 6,000/- compensation towards loss of affection.

The approach of the learned Tribunal in awarding compensation of Rs. 6,000/- for the death of Smt. Maya Bai does not appear to be correct. It is true that the income of the deceased was not proved by the claimants. However, under the provisions of the Motor Vehicles Act, compensation of Rs. 15,000/- has to be paid on account of no fault liability in case of death.

The learned counsel for the Insurance Company has submitted that the award of interest @ 12% per annum is on the higher side, which ought to have been suitably reduced.

Taking into consideration the facts and circumstances of the case, I am of the view that the compensation of Rs. 15,000/- shall be just and proper in the present case. Accordingly, the claimant-appellants are entitled to get compensation of Rs. **15,000/-** instead of **Rs. 6,000/-** along with simple interest @ 9% per annum from the date of filing of claim petition till the date of payment. Accordingly, the appeal deserves to be partly allowed and the impugned award is liable to be modified to the above extent.

The appeal is partly allowed. The impugned award dated 25.4.1988 is modified to the extent that the claimant-appellants shall be entitled to compensation of Rs. 15,00/- along with interest @ 9% per annum payable by the New India Assurance company, the insurer of the vehicle. No order as to costs.

(B.S. Verma, J.)

R.C.P.